Appendix A

Center for Economic and Policy Research

Regulation of Public Sector Collective Bargaining in the States

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CENTER FOR ECONOMIC AND POLICY RESEARCH
March 2014

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Acknowledgements

We thank Dean Baker and Nicole Woo for helpful comments and the Ford Foundation and Public Welfare Foundation for generous support.

Introduction

While the unionization of most private-sector workers is governed by the National Labor Relations Act (NLRA), the legal scope of collective bargaining for state and local public-sector workers is the domain of states and, where states allow it, local authorities. This hodge-podge of state-and-local legal frameworks is complicated enough, but recent efforts in Wisconsin, Michigan, Ohio, and other states have left the legal rights of public-sector workers even less transparent.

In this report, we review the legal rights and limitations on public-sector bargaining in the 50 states and the District of Columbia, as of January 2014. Given the legal complexities, we focus on three sets of workers who make up almost half of all unionized public-sector workers: teachers, police, and firefighters, with some observations, where possible, on other state-and-local workers.[1] For each group of workers, we examine whether public-sector workers have the right to bargain collectively;[2] whether that right includes the ability to bargain over wages; and whether public-sector workers have the right to strike.

Our work updates, in part, a 1988 study by Robert Valletta and Richard Freeman, who conducted a comprehensive review of collective-bargaining laws for state employees, local police, local firefighters, non-college teachers, and other local employees. Much of the attention to public-sector bargaining since Valletta and Freeman has concentrated on public school teachers and we have relied heavily on a statutes database compiled by the National Council on Teacher Quality for an important part of the information presented here.

At the state-and-local level, the right to bargain collectively, the scope of collective bargaining, and the right to strike in connection with union activity is determined by a combination of state laws and case law. The interpretations of the relevant laws and court interpretations, and the frequent silences of both legislators and the courts with respect to specific types of public-sector workers in particular legal jurisdictions, makes it difficult to summarize the legal state of play across 50 states, Washington, DC, and thousands of local jurisdictions. In the rest of this report, we offer our best interpretation of how the relevant state statutes and case law answer our three key questions – whether workers have the right to bargain collectively, whether unions can bargain over wages, and whether workers have the right to strike – for the three groups of workers we focus on (teachers, police, firefighters). The detailed appendix also includes, where available, information on the law as it applies to public-sector workers in general. Our approach is to look first at state statutes. Where

1 In 2013, according to Current Population Survey data, the United States had 16.9 million state-and-local public-sector workers. Of these, 4.5 million (26.6 percent) were teachers; about 700,000 (4.3 percent) were police officers; and about 350,000 (2.1 percent) were fire fighters. In the same year, 40 percent of all state-and-local workers were unionized. The unionization rate for teachers was 55 percent; police, 60 percent; and firefighters, 67 percent.

2 "Collective bargaining" is the term most used in statutes across the states. In some instances other terms such as "conferencing," the term used for teachers' collective bargaining in Tennessee, are used in regulations for the same principle.

state statutes have left ambiguities or do not address public-employee collective bargaining or related issues of interest, we have looked to case law and executive orders.

Given the complexities involved – and current efforts in many states to restructure the legal framework regulating public-sector unionization – we see the work here as an ongoing effort. We will revise our interpretations, and this document, as new information comes to our attention and as states implement important changes to existing laws.

Right to Collective Bargaining

Chart 1 shows the legality of collective bargaining for public-sector firefighters, police and teachers in each state. We have divided states into three categories: Illegal, Legal, and No Statute/Case Law. States labeled "Illegal" have specific statutes – or case law in the absence of a statute – that bars public employees from collectively bargaining (and, by extension, negotiating over wages or striking). In these cases, statutes or court cases directly address – and prohibit – collective bargaining. For states labeled "Legal," definitive laws or case law exist that actively protect or promote collective bargaining (or negotiating wages or the right to strike). States labeled "No Statute/Case Law" are ones where statutes and case law are ambiguous. In these cases, we were not able to identify any explicit state-level regulation of public-sector employees' collective bargaining (or right to negotiate wages or strike). In some of these cases, a lack of relevant state-level statutes means that a combination of historical practice and local laws ends up determining workers' rights. The leeway involved appears to vary across states. Details on the specific statutes or case law we used to assign states to the three categories appear in the appendix.

In four states –North Carolina, South Carolina, Tennessee, and Virginia– it is illegal for firefighters to bargain collectively. In these same states and Georgia, it is also illegal for police officers to bargain collectively. Five, mostly overlapping, states –Georgia, North Carolina, South Carolina, Virginia, plus Texas– do not allow collective bargaining for teachers. North Carolina, South Carolina, and Virginia have blanket statutes that prohibit collective bargaining for all public-sector employees and do not make exceptions. Texas and Georgia have state statutes banning collective bargaining in the public sector, but explicitly carve out exceptions for police and firefighters in the case of Texas (Tex. Gov't Code Ann. § 174.002) and fire fighters in the case of Georgia (Ga. Code Ann §25-5-4). Georgia is the only state that singles out teachers in legislation in order to prevent them from bargaining collectively (Ga. Code Ann. § 20-2-989.10).[3] In Tennessee, case law has ruled public-sector collective bargaining to be illegal, but the state legislature passed a law that specifically permits collective bargaining for teachers.

3 Ga. Code Ann. § 20-2-989.10 – *"Nothing in this part shall be construed to permit or foster collective bargaining as part of the state rules or local unit of administration policies."*

CHART 1

Legality of Collective Bargaining for Select Public-Sector Workers

	Firefighters	Police	Teachers
Illegal	North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Texas Virginia
Legal	Alaska Arizona Arkansas California Colorado Connecticut Delaware District of Columbia Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington West Virginia Wisconsin Wyoming	Alaska Arizona Arkansas California Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington West Virginia Wisconsin	Alabama Alaska Arkansas California Colorado Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Mississippi Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Tennessee Utah Vermont Washington West Virginia Wisconsin Wyoming
No Statute/ Case Law	Alabama Mississippi	Alabama Colorado Mississippi Wyoming	Arizona

Source: Authors' analysis. See Appendix for details.
Note: See text for discussion of Colorado, Idaho, Tennessee, and Wisconsin.

In almost all of the remaining states, firefighters, police, and teachers have the legal right (but not the requirement) to bargain collectively. Many states have legislation that covers all public employees in the state and establishes both the right to organize and to bargain collectively.

In a small number of states, neither legal statutes nor case law clearly establish or prohibit collective bargaining (see the third row of the chart). Firefighters in Alabama and Mississippi, police in Alabama, Colorado, Mississippi, and Wyoming, and teachers in Arizona all find themselves in a legal environment where no set statutes or existing case law governs collective bargaining at the state level. As a result, collective bargaining is permissible at the state level, but the actual legality of collective bargaining depends on local laws.

The case of Colorado provides a useful example of some of the challenges involved in categorizing state collective bargaining regimes. For firefighters, rights are spelled out in a state statute giving firefighters the right to form unions, meet and confer, and bargain collectively. However, for police (or peace officers), Colorado has no state-level laws specifically addressing these rights. The Colorado Firefighter Safety Act, however, does mention other public employees:

> C.R.S. 29-5-212 (1) – *The collective bargaining provisions of this part 2 do not apply to any home rule city that has language in its charter on June 5, 2013, that provides for a collective bargaining process for firefighters employed by the home rule city. This part 2 applies to all other public employers, including home rule cities without language in their charters that address a collective bargaining process for firefighters.*

Based on this language and the home rule regulations, some police officers have the right to bargain collectively depending on local determination. The Colorado State Lodge Fraternal Order of Police has several member lodges that represent these bargaining units. Meanwhile, teachers in Colorado have taken a different approach to their apparent exclusion from state law and have secured their collective bargaining through case law:

> Littleton Educ. Ass'n v. Arapahoe County Sch. Dist., 191 Colo. 411, 553 P.2d 793 (1976) – *School boards have the authority to enter into collective bargaining agreements with representatives of their employees provided that the agreements do not conflict with existing laws governing the conduct of the state school system.*

Other state employees that don't fall into one of the three categories have their collective bargaining rights granted through an executive order, Executive Order Authorizing Partnership Agreements with State Employees (12/28/2007).

Recent state actions in Idaho, Tennessee, and Wisconsin, and under consideration in other states have not eliminated public-sector bargaining, but have sought to limit significantly its scope. These recent actions do not change the status of these states in Chart 1 (or their status in Chart 2 where new limitations do not prohibit bargaining over compensation). However, these new legislative actions have reduced public-sector workers bargaining rights. In Idaho, SB 1108 (2011), restricted the scope of many teachers' collective bargaining. For teachers in Tennessee, a 2011 law changed the way bargaining is done to allow non-union professional organizations to represent employees with the effect that union representation is no longer a requirement for bargaining.[4] Wisconsin's Act 10, which has received extensive media attention, limits bargaining for public employees by imposing raise caps, limiting contracts to one year with salary freezes during the contract term, and requiring annual recertification of unions.[5]

4 Winkler, et al (2012), p. 315.

5 Greenhouse (2014).

Wage Negotiations

Fewer state statutes address the specific legality of wage negotiations than address the general right to bargain collectively. The only states where it is specifically illegal to negotiate over wages are those where collective bargaining is already illegal and therefore wage negotiations aren't allowed by default (see **Chart 2**). Of the remaining states, most protect the bargaining of wages and benefits through legislative definitions and as part of more broad-reaching statutes that cover general labor policy. In general, negotiations over wages and benefits are legal where collective bargaining is allowed for public employees.

CHART 2

Legality of Collective Wage Negotiation for Select Public-Sector Workers

	Firefighters	Police	Teachers
Illegal (Collective bargaining is also illegal in these states)	North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Texas Virginia
Legal	Alaska Arizona California Colorado Connecticut Delaware District of Columbia Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington Wisconsin Wyoming	Alaska Arizona California Connecticut Delaware District of Columbia Florida Hawaii Illinois Indiana Iowa Kansas Kentucky Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington Wisconsin	Alaska Arkansas California Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Tennessee Utah Vermont Washington West Virginia Wisconsin Wyoming
No Statute/ Case Law	Alabama Arkansas Louisiana Mississippi North Dakota West Virginia	Alabama Arkansas Colorado Idaho Louisiana Mississippi North Dakota West Virginia Wyoming	Alabama Arizona Colorado Kentucky Louisiana Mississippi North Dakota

Source: Authors' analysis. See Appendix for details.

A sizeable number of states have no state law or administrative code that addresses the issue of negotiations over wages and benefits. Where there is no regulation, the practice can be deemed "permissible," determined on a more case-by-case basis, or regulated at local levels.

Right to Strike

CHART 3

Legality of Striking for Select Public-Sector Workers

	Firefighters	Police	Teachers
Illegal	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin	Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin	Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin
Legal	Hawaii, Ohio	Hawaii, Ohio	Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, Montana, Ohio, Oregon, Pennsylvania, Vermont
No Statute/ Case Law	South Carolina, West Virginia, Wyoming	Colorado, Idaho, South Carolina, Utah, West Virginia, Wyoming	South Carolina, Utah, Wyoming

Source: Authors' analysis. See Appendix for details.

While the majority of states allows collective bargaining and wage negotiations for public-sector workers, the opposite is the case when it comes to the right to strike (**Chart 3**). Only two states (Hawaii and Ohio) grant firefighters and police the right to strike, and only twelve states (Alaska, California, Colorado, Hawaii, Illinois, Louisiana, Minnesota, Montana, Ohio, Oregon, Pennsylvania, and Vermont) allow teachers to strike. Even in states that have statutes protecting the right to strike for public-sector workers in general, specific exceptions are created for public safety employees. In Ohio, while strikes are permissible, "the public employer may seek an injunction against the strike in the court of common pleas of the county in which the strike is located" (Ohio Rev. Code Ann. § 4117.15). In all of the states where teachers can strike, the right to strike has been extended to public-sector workers in general (with the exception of firefighters and police officers).

As with the right to bargain collectively over wages and benefits, a few states don't address the issue of strikes directly in state laws. Strictly speaking, South Carolina has no state statute that addresses public-sector workers' right to strike, but we have included South Carolina with those where strikes are illegal because the state prohibits collective bargaining. In other states without statutes speaking to strikes, the right to strike depends on local law or the terms of the collective-bargaining agreement itself.

Observations, Anomalies, and Ambiguities

The majority of states have clear legal statutes that lay out the rights of public-sector workers. Nevertheless, the legal framework in a number of states is less clear.

For example, the Arizona statute that governs public-safety employee rights, includes the ambiguous language: "shall not be construed to compel or prohibit in any manner any employee wage and benefit negotiations" (Arizona Revised Statutes: Chap 8, Art 6, § 23-1411). This type of language, neither requiring nor prohibiting collective bargaining or other areas of worker rights, occurs in several others states as well.

In recognition of this ambiguity, the National Council on Teacher Quality (NCTQ) classifies collective bargaining laws as falling into three categories:[6]

Collective bargaining required – Districts must collectively bargain if employees request to do so.

Collective bargaining permissible – Districts may choose whether or not to collectively bargain if employees request to do so.

Collective bargaining prohibited – It is illegal for districts to collectively bargain with employees.

In our analysis, we only distinguish between legal frameworks where collective bargaining, negotiations over wages and benefits, and public-sector strikes are "legal" or "illegal." Some states

6 See NCTQ.

classified here as having a legal right to bargain collectively, would be categorized as only "permissible" by NCTQ.

A separate issue involves barriers put in place in some states to prevent union organizing or to make it more difficult. This report looks only at the legality of collective bargaining, wage negotiation, and striking; there are many other issues surrounding public-sector employees' ability to negotiate and organize that are affected by state and local regulations that are not discussed here. For example, earlier we mentioned specific cases of Idaho, Tennessee, and Wisconsin. In addition, some states are applying "right-to-work" laws specifically to public employees as well (Alabama, Florida, Idaho, Iowa, Kansas, Michigan, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Tennessee, and Utah).

In some cases, employee associations represent the interests of employees even when collective bargaining is illegal. For example the Fraternal Order of Police (FOP) has "lodges" in all states, including Virginia, North Carolina, and South Carolina where collective bargaining is prohibited. While the FOP is the umbrella for many bargaining units in states that allow collective bargaining, in states where collective bargaining is illegal, the organization provides other services (that a union might) without being able to represent police officers in negotiations over employment conditions. Similar associations exist for teachers and firefighters in other states The presence of a "union" is not indicative of collective bargaining rights in these localities. These non-union employee associations may negotiate on behalf of workers in some circumstances where formal collective bargaining is illegal.

While about one-third of all state-and-local public-sector workers fall under the three main categories discussed above – firefighters, police, and teachers – over 11 million employees work in other state- and local-government jobs. There are fewer clear statutes that cover these other public-sector workers. Some states are like Vermont, which has both a State Employees Labor Relations Act and a Vermont Municipal Labor Relations Act that govern public employees and their collective bargaining from the state level. North Carolina, South Carolina, and Virginia have state laws that ban all collective bargaining. In others, such as Arizona, the legality of collective bargaining is determined for other public-sector workers through a range of executive orders, state law, and case law.

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Appendix

The following table draws on data compiled by American Federation of State, County & Municipal Employees (AFSCME); International Association of Fire Fighters (1998); National Council on Teacher Quality; National Right to Work Legal Defense Foundation; Winkler, Scull, and Zeehandelaar (2012); and Valletta, and Freeman (1988).

Alabama			
All/Other	Collective Bargaining	Wage Negotiation	Striking
Police	Collective bargaining is not addressed No state statute regarding collective bargaining. Collective bargaining rights for police are determined on the local level.	Wage negotiation not addressed No state statute regarding collective bargaining	Striking is illegal Case Law: Cherokee County Hosp. Bd. v. Retail, Wholesale, & Dept. Store Union, AFL-CIO, 294 Ala. 151, 153, 313 So. 2d 514, 516 (1975) "Public strikes are illegal and public lockouts are improper, if not illegal."
Firefighters	Collective bargaining is not addressed No state statute regarding collective bargaining. Collective bargaining rights for firefighters are determined on the local level.	Wage negotiation not addressed No state statute regarding collective bargaining	Striking is illegal Case Law: Cherokee County Hosp. Bd. v. Retail, Wholesale, & Dept. Store Union, AFL-CIO, 294 Ala. 151, 153, 313 So. 2d 514, 516 (1975) "Public strikes are illegal and public lockouts are improper, if not illegal."
Teachers	Collective bargaining is legal Statute: Ala. Code § 16-1-30 "Before adopting the written policies, the board shall, directly or indirectly through the chief executive officer, consult with the applicable local employees' professional organization." Case Law: Walker County Bd. of Educ. v. Walker County Educ. Ass'n, 431 So. 2d 948, 954 (Ala. 1983) "Section 16-8-10 only obligates the Board to meet and consult with those persons set out in the statute; it does not obligate the Board to reach any agreement, accept any proposals or negotiate any matter if it does not wish to do so."	Wage negotiation not addressed No state statute regarding collective bargaining	Striking is illegal Case Law: Cherokee County Hosp. Bd. v. Retail, Wholesale, & Dept. Store Union, AFL-CIO, 294 Ala. 151, 153, 313 So. 2d 514, 516 (1975) "Public strikes are illegal and public lockouts are improper, if not illegal."

Alaska			
	Collective Bargaining	Wage Negotiation	Striking

Appendix B

Office of Navajo Labor Relations

Collective Bargaining Regulations

EXHIBIT A

Pursuant to its authority under 2 N.T.C., Section 604 (b) (1) to adopt regulations for the enforcement and implementation of the labor laws and policies of the Navajo Nation, the Human Services Committee of the Navajo Nation Council adopts the following regulation implementing Section 6 of the Navajo Tribal Code, to provide rules and enforcement procedures to permit collective bargaining for employees of the Navajo Nation, its agencies or enterprises:

Section 1 PURPOSE

The purpose of these regulations is to implement Section 6 of the Navajo Preference in Employment Act, Title 15, Chapter 7 with respect to the employees of the Navajo Nation, its agencies and enterprises. Like the Act, the goal of these regulations is to promote harmonious and cooperative relations between the Navajo Nation, its agencies and enterprises and Navajo Nation employees through collective bargaining.

Section 2 DEFINITIONS

For the purposes of this regulation - -

a. Confidential employee means an employee who acts in a confidential capacity with respect to a supervisor or management official who formulates or implements management policies in the field of labor-management relations.

b. Labor organization means an organization which seeks to represent employees for purposes of collective bargaining and in otherwise conferring with public employers on matters pertaining to employment relations.

c. Management official means an employee in a job position that requires the employees to formulate or determine the policies of the public employer.

d. Navajo Nation employees means an employee of the Navajo Nation, as well as employees political subdivisions, agencies, enterprises, educational institutions and other entities created by the Navajo Nation, but does not include managers, supervisors or confidential employees.

e. Office or ONLR means the Office of Navajo Labor Relations.

f. Public employer means the Navajo Nation, as well as its political subdivisions, agencies, enterprises, educational institutions and other entities created by the Navajo Nation.

g. Supervisor means an employee who spends a preponderance of his or her work time exercising the authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, or adjusting their grievances; however, the exercise of this authority must not merely be routine or clerical in nature, but shall require the exercise of independent judgment.

Section 3 RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

a. Pursuant to Section 6 of the Navajo Preference in Employment Act, Navajo nation employees have the right to organize and bargain collectively, but do not have the right to strike or picket. Navajo Nation employees shall have the right to form, join or assist any labor organization for the purpose of collective bargaining without interference, restraint or coercion by a public employer or any other person.

b. Management of public employers shall maintain neutrality with regard to organizing efforts of employees, and therefore shall make no statements or expressions that threaten reprisal or promise benefits in connection with the exercise of rights guaranteed under Section 6 of the Navajo Preference in Employment Act. Management's obligation to remain neutral does not prevent expressions or statements that - -

(i) Publicize the fact of a representational election, and encourage employees to exercise their right to vote in such an election;

(ii) Correct the record with regard to any false or misleading statement made by any person; or

(iii) Inform employees of the Navajo Nation's policy relating to labor-management relations and representation by labor organizations.

Section 4 PROHIBITED EMPLOYER PRACTICES

No public employer, or representative of a public employer, shall - -

a. Interfere with, restrain or coerce any Navajo Nation employee in the exercise of rights under Section 6 of the Navajo Preference in Employment Act;

b. Discriminate against a Navajo nation employee with hiring or tenure of employment, or any term or condition of employment, to discourage or encourage membership in any labor organization, however, it shall not be a violation of these regulations for a public employer to make an agreement with a labor organization to require membership in the

labor organization as a condition of employment on or after the fifth day following employment;

c. Dominate or interfere with the formation or administration of any labor organization;

d. Refuse to bargain collectively and in good faith with labor organizations certified pursuant to Section 6 of these regulations;

e. Discharge or otherwise discriminate against any Navajo Nation employee because the employee has filed charges or given testimony in connection with a proceeding under these regulations; or

f. Refuse or fail to comply with any collective bargaining agreement.

Section 5 EXCLUSIVE BARGAINING AGENT

A labor organization selected for the purposes of collective bargaining by the majority of the employees in an appropriate bargaining unit, and certified pursuant to Section 6 of these regulations, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay or other terms and conditions of employment.

Section 6 CERTIFICATION

a. A labor organization seeking certification as the bargaining representative shall submit a petition for certification to ONLR. The petition either shall be signed by current employees in the bargaining unit, or shall be accompanied by authorization cards signed by employees in the bargaining unit.

b. (i) Upon receiving a petition for certification, ONLR shall determine the appropriateness of the bargaining unit within 10 days of the filing of the position.

(ii) If the bargaining unit identified in the position is appropriate, ONLR shall ascertain the number of employees in the bargaining unit at the time the petition was made and shall determine the number of employees who have selected the labor organization as their representative at the time of the application.

(iii) If ONLR determines that more than 55% of the employees in the bargaining unit have selected the labor organization as their representative at the time the position is filed, ONLR shall certify the labor organization as the exclusive bargaining agent of the employees without an election.

(iv) If ONLR determines that not less than 35% and not more than 55% of the employees in the bargaining unit have selected the labor organization as their representative at the time the petition is filed, ONLR shall conduct a representation vote among the employees in the bargaining unit no later than 45 days following the filing of the petition. Notice of the election shall be posted at the public employer's facility.

(v) Other labor organizations submitting petitions with the signatures of more than 20 percent of the employees in the bargaining unit also shall be included on the ballot.

(vi) The labor organization(s) on the ballot shall be supplied with a complete list of current employees in the proposed bargaining unit a reasonable time prior to the representation vote. In elections where only one labor organization is listed on the ballot, ONLR shall certify the labor organization as the exclusive bargaining agent of the employees if more than 50% of the employees vote in favor of representation by the labor organization. Where more than one labor organization is included on the ballot, a labor organization receiving a plurality of votes shall be certified as the exclusive bargaining agent.

Section 7 IMPASSE RESOLUTION

a. If a public employer and labor organization are unable to reach collective agreement following good faith bargaining, either side may request that Chief Justice of the Navajo Nation to designate an impartial mediator to the negotiations, or the parties may themselves designate a mutually-acceptable mediator. The cost of mediator's expenses and fees shall be paid equally by the parties.

b. The mediator shall provide services to the parties until either the parties reach agreement, the mediator believes that mediation services are no longer helpful, or sixty days have passed since the mediator was appointed, whichever occurs first.

c. If the services of the mediator cease without the parties reaching agreement, either party may declare an impasse. The parties shall meet and exchange final offers. If no agreement can be reached, either party may request that the negotiation be resolved through interest arbitration. If the parties are unable to designate a mutually-agreeable arbitrator, either party may request that Chief Justice of the Navajo nation designate the arbitrator, who shall be an impartial pursuant to this section. The cost of the arbitrator's expenses and fees shall be paid equally by the parties.

d. Unless the parties mutually agree to other arbitration procedures, the arbitrator shall decide between the final offers made by the parties.

Section 8 DECERTIFICATION OF BARGAINING AGENT

a. Upon the filing with ONLR of a petition signed by 35 percent or more of the public employees in a bargaining unit seeking the decertification of a certified bargaining agent, ONLR shall conduct a secret ballot election to determine whether the certified bargaining agent continues to enjoy the support of a majority of employees participating in an election.
b. A petition for decertification of a certified bargaining agent shall not be considered timely - -

(i) during the first 12 months following the certification of the bargaining agent; or

(ii) when there is a collective bargaining agreement, except that a request for a decertification election may be made no earlier than 180 days and no later than 60 days prior to the end of the agreement; provided, however, than a request for an election may be filed at any time after the expiration of the third year of a collective bargaining agreement.

Section 10 MONITORING AND ENFORCEMENT

Monitoring and enforcement of these regulations shall be pursuant to the provisions of Section 10 of the Navajo Preference in Employment Act.

Appendix C

1999 California Model

Tribal Labor Relations Ordinance

Model Tribal Labor Relations Ordinance

Addendum B

In compliance with Section 10.7 of the Compact, the Tribe agrees to adopt an ordinance identical to the Model Tribal Labor Relations Ordinance attached hereto, and to notify the State of that adoption no later than October 12, 1999. If such notice has not been received by the State by October 13, 1999, this Compact shall be null and void. Failure of the Tribe to maintain the Ordinance in effect during the term of this Compact shall constitute a material breach entitling the State to terminate this Compact. No amendment of the Ordinance shall be effective unless approved by the State.

Model Tribal Labor Relations Ordinance

Section 1: Threshold of applicability

(a) Any tribe with 250 or more persons employed in a tribal casino and related facility shall adopt this Tribal Labor Relations Ordinance (TLRO or Ordinance). For purposes of this Ordinance, a "tribal casino" is one in which class III gaming is conducted pursuant to the tribal-state compact. A "related facility" is one for which the only significant purpose is to facilitate patronage of the class III gaming operations.

(b) Any tribe which does not operate such a tribal casino as of September 10, 1999, but which subsequently opens a tribal casino, may delay adoption of this ordinance until one year from the date the number of employees in the tribal casino or related facility as defined in 1(a) above exceeds 250.

(c) Upon the request of a labor union, the Tribal Gaming Commission shall certify the number of employees in a tribal casino or other related facility as defined in 1(a) above. Either party may dispute the certification of the Tribal Gaming Commission to the Tribal Labor Panel.

Section 2: Definition of Eligible Employees

(a) The provisions of this ordinance shall apply to any person (hereinafter "Eligible Employee") who is employed within a tribal casino in which Class III gaming is conducted pursuant to a tribal-state compact or other related facility, the only significant purpose of which is to facilitate patronage of the Class III gaming operations, except for any of the following:

(1) any employee who is a supervisor, defined as any individual having authority, in the interest of the tribe and/or employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(2) any employee of the Tribal Gaming Commission;

(3) any employee of the security or surveillance department, other than those who are responsible for the technical repair and maintenance of equipment;

(4) any cash operations employee who is a "cage" employee or money counter; or

(5) any dealer.

Section 3: Non-interference with regulatory or security activities

Operation of this Ordinance shall not interfere in any way with the duty of the Tribal Gaming Commission to regulate the gaming operation in accordance with the Tribe's National Indian Gaming Commission-approved gaming ordinance. Furthermore, the exercise of rights hereunder shall in no way interfere with the tribal casino's surveillance/security systems, or any other internal controls system designed to protect the integrity of the Tribe's gaming operations. The Tribal Gaming Commission is specifically excluded from the definition of tribe and its agents.

Section 4: Eligible Employees free to engage in or refrain from concerted activity

Eligible Employees shall have the right to self-organization, to form, to join, or assist employee organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

Section 5: Unfair labor practices for the Tribe

It shall be an unfair labor practice for the tribe and/or employer or their agents:

(1) to interfere with, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, but this does not restrict the tribe and/or employer and a certified union from agreeing to union security or dues check off;

(3) to discharge or otherwise discriminate against an Eligible Employee because s/he has filed charges or given testimony under this Ordinance;

(4) to refuse to bargain collectively with the representatives of Eligible Employees.

Section 6: Unfair labor practices for the union

It shall be an unfair labor practice for a labor organization or its agents:

(1) to interfere, restrain or coerce Eligible Employees in the exercise of the rights guaranteed herein;

(2) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a primary or secondary boycott or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce or other terms and conditions of employment. This section does not apply to section 11;

(3) to force or require the tribe and/or employer to recognize or bargain with a particular labor organization as the representative of Eligible Employees if another labor organization has been certified as the representative of such Eligible Employees under the provisions of this TLRO;

(4) to refuse to bargain collectively with the tribe and/or employer, provided it is the representative of Eligible Employees subject to the provisions herein;

(5) to attempt to influence the outcome of a tribal governmental election, provided, however, that this section does not apply to tribal members.

Section 7: Tribe and union right to free speech

The tribe's and union's expression of any view, argument or opinion or the dissemination thereof, whether in written, printed, graphic or visual form, shall not constitute or be evidence of interference with, restraint, or coercion if such expression contains no threat of reprisal or force or promise of benefit.

Section 8: Access to Eligible Employees

(a) Access shall be granted to the union for the purposes of organizing Eligible Employees, provided that such organizing activity shall not interfere with patronage of the casino or related facility or with the normal work routine of the Eligible Employees and shall be done on non-work time in non-work areas that are designated as employee break rooms or locker rooms that are not open to the public. The Tribe may require the union and or union organizers to be subject to the same licensing rules applied to individuals or entities with similar levels of access to the casino or related facility, provided that such licensing shall not be unreasonable, discriminatory, or designed to impede access.

(b) The Tribe, in its discretion, may also designate additional voluntary access to the Union in such areas as employee parking lots and non-Casino facilities located on tribal lands.

(c) In determining whether organizing activities potentially interfere with normal tribal work routines, the union's activities shall not be permitted if the Tribal Labor Panel determines that they compromise the operation of the casino:

(1) security and surveillance systems throughout the casino, and reservation;

(2) access limitations designed to ensure security;

(3) internal controls designed to ensure security;

(4) other systems designed to protect the integrity of the tribe's gaming operations, tribal property and/or safety of casino personnel, patrons, employees or tribal members, residents, guests or invitees.

(d) The tribe shall provide to the union, upon a thirty percent (30%) showing of interest to the Tribal Labor Panel, an election eligibility list containing the full first and last name of the Eligible Employees within the sought after bargaining unit and the Eligible Employees' last known address within ten (10) working days. Nothing herein shall

preclude a tribe from voluntarily providing an election eligibility list at an earlier point of a union organizing campaign.

(e) The tribe agrees to facilitate the dissemination of information from the union to Eligible Employees at the tribal casino by allowing posters, leaflets and other written materials to be posted in non-public employee break areas where the tribe already posts announcements pertaining to Eligible Employees. Actual posting of such posters, notices, and other materials shall be by employees desiring to post such materials.

Section 9: Indian preference explicitly permitted

Nothing herein shall preclude the tribe from giving Indian preference in employment, promotion, seniority, lay-offs or retention to members of any federally recognized Indian tribe or shall in any way affect the tribe's right to follow tribal law, ordinances, personnel policies or the tribe's customs or traditions regarding Indian preference in employment, promotion, seniority, lay-offs or retention. Moreover, in the event of a conflict between tribal law, tribal ordinance or the tribe's customs and traditions regarding Indian preference and this Ordinance, the tribal law, tribal ordinance, or the tribe's customs and traditions shall govern.

Section 10: Secret ballot elections required

(a) Dated and signed authorized cards from thirty percent (30%) or more of the Eligible Employees within the bargaining unit verified by the elections officer will result in a secret ballot election to be held within 30 days from presentation to the elections officer.

(b) The election shall be conducted by the election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning representation of the tribe and/or Employer's Eligible Employees by a labor organization shall be resolved by the election officer. The election officer shall be chosen upon notification by the labor organization to the tribe of its intention to present authorization cards, and the same election officer shall preside thereafter for all proceedings under the request for recognition; provided, however, that if the election officer resigns, dies, or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall certify the labor organization as the exclusive collective bargaining representative of a unit of employees if the labor organization has received the majority of votes by Eligible Employees voting in a secret ballot election that the election officer determines to have been conducted fairly. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or union, the election officer may order a re-run election. If the election officer determines that there was the commission of serious Unfair Labor Practices by the tribe that interfere with the election process and preclude the holding of a fair election, and the labor organization is able to demonstrate that it had the support of a majority of the employees in the unit at any point before or during the course of the tribe's misconduct, the election officer shall certify the labor organization.

(d) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

(e) A union which loses an election and has exhausted all dispute remedies related to the election may not invoke any provisions of this labor ordinance at that particular casino or related facility until one year after the election was lost.

Section 11: Collective bargaining impasse

Upon recognition, the tribe and the union will negotiate in good faith for a collective bargaining agreement covering bargaining unit employees represented by the union. If collective bargaining negotiations result in impasse, and the matter has not been resolved by the tribal forum procedures set forth in Section 13(b) governing resolution of impasse within sixty (60) working days or such other time as mutually agreed to by the parties, the union shall have the right to strike. Strike-related picketing shall not be conducted on Indian lands as defined in 25 U.S.C. § 2703(4).

Section 12: Decertification of bargaining agent

(a) The filing of a petition signed by thirty percent (30%) or more of the Eligible Employees in a bargaining unit seeking the decertification of a certified union, will result in a secret ballot election to be held 30 days from the presentation of the petition.

(b) The election shall be conducted by an election officer. The election officer shall be a member of the Tribal Labor Panel chosen pursuant to the dispute resolution provisions herein. All questions concerning the decertification of the union shall be resolved by an election officer. The election officer shall be chosen upon notification to the tribe and the union of the intent of the employees to present a decertification petition, and the same election officer shall preside thereafter for all proceedings under the request for decertification; provided however that if the election officer resigns, dies or is incapacitated for any other reason from performing the functions of this office, a substitute election officer shall be selected in accordance with the dispute resolution provisions herein.

(c) The election officer shall order the labor organization decertified as the exclusive collective bargaining representative if a majority of the employees voting in a secret ballot election that the election officer determines to have been conducted fairly vote to decertify the labor organization. If the election officer determines that the election was conducted unfairly due to misconduct by the tribe and/or employer or the union the election officer may order a re-run election or dismiss the decertification petition.

(d) A decertification proceeding may not begin until one (1) year after the certification of a labor union if there is no collective bargaining agreement. Where there is a collective bargaining agreement, a decertification petition may only be filed no more than 90 days and no less than 60 days prior to the expiration of a collective bargaining agreement. A decertification petition may be filed anytime after the expiration of a collective bargaining agreement.

(e) The tribe or the union may appeal any decision rendered after the date of the election by the election officer to a three (3) member panel of the Tribal Labor Panel mutually chosen by both parties.

Section 13: Binding dispute resolution mechanism

(a) All issues shall be resolved exclusively through the binding dispute resolution mechanisms herein, with the exception of a collective bargaining impasse, which shall only go through the first level of binding dispute resolution.

(b) The first level of binding dispute resolution for all matters related to organizing, election procedures, alleged unfair labor practices, and discharge of Eligible Employees shall be an appeal to a designated tribal forum such as a Tribal Council, Business Committee, or Grievance Board. The parties agree to pursue in good faith the expeditious resolution of these matters within strict time limits. The time limits may not be extended without the agreement of both parties. In the absence of a mutually satisfactory resolution, either party may proceed to the independent binding dispute resolution set forth below. The agreed upon time limits are set forth as follows:

(1) All matters related to organizing, election procedures and alleged unfair labor practices prior to the union becoming certified as the collective bargaining representative of bargaining unit employees, shall be resolved by the designated tribal forum within thirty (30) working days.

(2) All matters after the union has become certified as the collective bargaining representative and relate specifically to impasse during negotiations, shall be resolved by the designated tribal forum within sixty (60) working days;

(c) The second level of binding dispute resolution shall be a resolution by the Tribal Labor Panel, consisting of ten (10) arbitrators appointed by mutual selection of the parties which panel shall serve all tribes that have adopted this ordinance. The Tribal Labor Panel shall have authority to hire staff and take other actions necessary to conduct elections, determine units, determine scope of negotiations, hold hearings, subpoena witnesses, take testimony, and conduct all other activities needed to fulfill its obligations under this Tribal Labor Relations Ordinance.

(1) Each member of the Tribal Labor Panel shall have relevant experience in federal labor law and/or federal Indian law with preference given to those with experience in both. Names of individuals may be provided by such sources as, but not limited to, Indian Dispute Services, Federal Mediation and Conciliation Service, and the American Academy of Arbitrators.

(2) Unless either party objects, one arbitrator from the Tribal Labor Panel will render a binding decision on the dispute under the Ordinance. If either party objects, the dispute will be decided by a three (3) member panel of the Tribal Labor Panel, which will render a binding decision. In the event there is one arbitrator, five (5) Tribal Labor Panel names shall be submitted to the parties and each party may strike no more than two (2) names. In the event there is a three (3) member panel, seven (7) TLP names shall be submitted to the parties and each party may strike no more than two (2) names. A coin toss shall determine which party may strike the first name. The arbitrator will generally follow the American Arbitration Association's procedural rules relating to labor dispute resolution. The arbitrator or panel must render a written, binding decision that complies in all respects with the provisions of this Ordinance.

(d) Under the third level of binding dispute resolution, either party may seek a motion to compel arbitration or a motion to confirm an arbitration award in Tribal Court, which may be appealed to federal court. If the Tribal Court does not render its decision within 90 days, or in the event there is no Tribal Court, the matter may proceed directly to federal court. In the event the federal court declines jurisdiction, the tribe agrees to a limited waiver of its sovereign immunity for the sole purpose of compelling arbitration or confirming an arbitration award issued pursuant to the Ordinance in the appropriate state superior court. The parties are free to put at issue whether or not the arbitration award exceeds the authority of the Tribal Labor Panel.

Appendix D

California Research Bureau

California Tribal-State Gambling Compacts

1999-2006

Labor Standards

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California Tribal-State Gambling Compacts, 1999-2006

By Charlene Wear Simmons, Ph.D.
Assistant Director

February 2007

CRB 07-001

LABOR STANDARDS

RATIFIED COMPACTS

1999 Tribal-State Compact

- The tribe agrees to adopt standards no less stringent than federal workplace and occupational health and safety standards. The state may inspect for compliance unless a federal agency regularly inspects for compliance with the federal standards. Violations of the applicable standards are violations of the compact.
- The tribe agrees to adopt and comply with state and federal anti-discrimination laws. However the tribe may provide employment preference to Native Americans.
- The tribe may create its own workers compensation system provided there is specified coverage including the right to notice, an independent medical examination, a hearing before an independent tribunal, a means of enforcement, and benefits comparable to those afforded under state law. Independent contractors doing business with the tribe must comply with state workers' compensation laws.
- The tribe agrees to participate in state unemployment compensation and disability programs for employees of the gaming facility, and consents to the jurisdiction of state agencies and courts charged with enforcement.

Model Tribal Labor Relations Ordinance (Optional Addendum B)

The 1999 tribal-state compact requires a tribe to adopt an agreement or other procedure acceptable to the state for addressing the organization and representational rights of Class III gaming employees and employees in related enterprises, or the compact is null and void. Attached to the compact, as "Optional Addendum B" is a ***Model Tribal Labor Relations Ordinance.*** Tribes with 250 or more casino-related employees are required to adopt an identical ordinance. (The tribal ordinances were reviewed for conformity by the governor's legal affairs advisor.)

- Under the ***Model Tribal Labor Relations Ordinance*** ("Ordinance"), employees have the right to engage in employee organizations, bargain collectively, and join in concerted activities for the purpose of collective bargaining. The Ordinance defines unfair labor practices on the part of a tribe or a union, guarantees the right to free speech, and provides for union access to employees for bargaining purposes. (Excluded employees include supervisors, employees of the tribal gaming commission, employees of the security or surveillance departments, cash operations employees or any dealer.)

Key Issues: Certification of union representation and dispute resolution

- Upon a showing of interest by 30 percent of the applicable employees, the tribe is to provide the union an election eligibility list of employee names and addresses. A secret ballot is to follow. An elections officer chosen by the tribe is to verify the authorization cards and conduct the election. If the labor organization receives a majority of votes, the election officer is to certify it as the exclusive collective bargaining representative for the unit of employees. Decisions may be appealed to a tribal labor panel.

- The Ordinance establishes procedures to address an impasse in collective bargaining, including the union's right to strike outside of Indian lands, and to decertify a certified union. It also creates three levels of binding dispute resolution mechanisms, beginning with a tribal forum, followed by an arbitration panel, and finally tribal court and federal court. Collective bargaining impasses may only proceed to the first level of binding dispute resolution, in which a designated tribal forum makes the decision.

2003 Tribal-State Compacts

The three new compacts negotiated by Governor Davis in 2003 are similar to the 1999 tribal-state compact. They were with the Torres-Martinez Desert Cahuilla Indians, the La Posta Band of Mission Indians and the Santa Ysabel Band of Diegueño Indians.

- No apparent change from the 1999 compact's ***Model Tribal Labor Relations Ordinance.***

2004 Tribal-State Compacts

Governor Schwarzenegger signed new compacts with three tribes (the Coyote Valley Band of Pomo Indians, the Fort Mojave Indian Tribe and the Lytton Rancheria). The Lytton compact was not ratified by the legislature; the Coyote Valley and Fort Mojave compacts were ratified. The governor also negotiated amended 1999 compacts with seven tribes, all of which were ratified. Key changes are summarized below.

Coyote Valley Band of Pomo Indians and Fort Mojave Indian Tribe

- The tribes agree to adopt and comply with federal and state workplace and occupational health and safety standards. State inspectors may assess compliance unless regular inspections are made by a federal agency with the federal standards. Violations of the applicable standards are violations of the compact and may be the basis to prohibit employee entry into the gaming facility.
- The tribes agree to participate in the state's workers' compensation program for employees of the gaming facility and consent to the jurisdiction of the Worker's Compensation Appeals Board and state courts for purposes of enforcement. The tribes also agree to participate in the state unemployment compensation benefits

program and withhold the appropriate taxes, and consent to state agency jurisdiction and the jurisdiction of state courts for enforcement.

Model labor relations ordinance

The tribes agree to repeal their existing tribal labor relations ordinances and adopt the labor relations ordinance appended to the compact, which differs in important respects from the model ordinance appended to the 1999 and 2003 compacts.

- As in the 1999 compact, a labor organization is granted access in order to organize eligible employees in non-work areas on non-work time. The tribe agrees to provide the labor organization with a list of eligible employees and their last known addresses upon a showing of interest from 30 percent of the employees. The tribe also agrees to facilitate the dissemination of information from the labor organization to eligible employees.

Key Issues: union certification and dispute resolution

- ***"Card check neutrality"***--A new Section 7 on "tribe and union neutrality" provides that if a labor organization offers in writing to not engage in strikes or disparage the tribe, and to resolve all issues through binding dispute mechanisms, the tribe agrees to recognize and certify the labor organization if it provides dated and signed authorization cards from at least 50 percent plus one of the eligible employees without a formal election. The tribe agrees to not express any opposition to that labor organization or preference for another labor organization.
- If a labor organization agrees to accept the conditions specified for "tribe and union neutrality" in Section 7(a), the labor organization is deemed to have accepted the entire Ordinance and waives any right to file any form of action or proceeding with the National Labor Relations Board.*
- If a labor organization has agreed in writing to accept the conditions for "tribe and union neutrality" specified in Section 7(a), and the union engages in a strike, boycott or other economic activity, the tribe may withdraw from its obligation to resolve the impasse through a binding dispute mechanism. If the labor organization has not agreed to the conditions in Section 7(a), it may engage in a strike in the event the impasse is not solved through binding dispute resolution mechanisms.
- The model ordinance creates three levels of binding dispute resolution mechanisms in the event of an impasse: first, a designated tribal forum, and second, a Tribal Labor Panel composed of arbitrators. The panel is to serve all the tribes that have adopted this ordinance and its decisions are binding. Finally, either party may seek to compel

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* The National Labor Relations Board has asserted jurisdiction over labor relations in tribal casinos, finding in a 2004 *Decision and Order* that operating a commercial business such as a casino "...is not an expression of sovereignty in the same way that running a tribal court system is." The San Manuel Band of Mission Indians has appealed the decision to the U.S. Supreme Court. See Charlene Wear Simmons, *Gambling in the Golden State*, California Research Bureau, May 2006, pp. 76-77 for a brief discussion of this issue.

arbitration or confirm an arbitration award in Tribal Court, and the decision may be appealed to federal court. Unlike the 1999 compact, a collective bargaining impasse may proceed through all levels of dispute resolution, not just the first level.

- The model ordinance specifies factors for an arbitrator to consider if collective bargaining negotiations result in an impasse. These include wages, hours and other terms and conditions of employment at other Indian gaming operations in Mendocino County, the cost of living, regional and local market conditions, the tribe's financial capacity (if the issues is raised by the tribe), the size and type of casino or related facility, and the competitive nature of the business environment.

Rumsey Band of Wintun Indians--amended 1999 compact

- The section on labor relations in the 1999 compact is repealed, replaced by the tribe's labor relations ordinance since the tribe has recognized a union as the exclusive collective bargaining representative for its employees and entered into a collective bargaining agreement. As in the Coyote Valley compact, the tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

Buena Vista Rancheria of Me-Wuk Indians of California, Ewiiaapaayp Band of Kumeyaay Indians, Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, United Auburn Community –amended 1999 compacts

- Within 30 days of the effective date of the amendment, the tribes are to amend their labor relations ordinances (described in the 1999 tribal-state compact) to incorporate a revised tribal labor relations ordinance similar to the ordinance described in the Coyote Valley compact, including card check neutrality. The local labor market is to be considered in case of an impasse. Buena Vista and Ewiiaapaayp agree to adopt and comply with federal and state workplace and occupational health and safety standards.

Viejas Band of Kumeyaay Indians—amended 1999 compact

- Since the tribe entered into a collective bargaining agreement with a labor organization before the enactment of its tribal labor relations ordinance, and that agreement has since been renewed, no change in the ordinance is necessary to address employee rights. The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

Pala Band of Mission Indians—amended 1999 compact

- The tribe has entered into a Memorandum of Understanding with a labor union providing for employer neutrality, arbitrator-verified authorizations that a majority of eligible employees have authorized the union, a no strike clause and binding arbitration. The tribe has recognized the union as its exclusive bargaining representative. For this reason, the parties agree that no change in the tribal labor relations ordinance is necessary. The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards.

2006 Tribal-State Compact

The governor negotiated an amended 1999 tribal-state compact with the Quechan Tribe in 2005. The amended compact was ratified by the legislature in August 2006 and signed by the governor on September 28, 2006.

Quechan Tribe of the Fort Yuma Indian Reservation—amended 1999 compact

- The tribe agrees to adopt and comply with federal and state workplace and occupational health and safety standards and consents to the state's jurisdiction to inspect and enforce those standards.
- The model labor relations ordinance is similar to that in the 1999 tribal-state compact, with some changes. These include deletion of the provision that tribal law, ordinances, customs, and traditions prevail over the model labor relations ordinance in the event of conflict. The provison that strike-related picketing shall not be conducted on Indian lands is also deleted.
- Notably, this compact does not provide for card check neutrality. The selection of a collective bargaining agency is by secret ballot in an election conducted by the tribe.

UNRATIFIED COMPACTS

2004 Unratified Tribal-State Compact

Lytton Rancheria of California

- The tribe agrees to withhold earnings of persons employed at the gaming facility to comply with child and spousal support orders.
- The initial provisions of the model labor relations ordinance are somewhat similar to those in the Coyote Valley tribal-state compact. A major difference is the lack of "card check neutrality." The union is not afforded the option of presenting authorization cards signed by 50 percent of the eligible employees, requiring the tribe to enter into an agreement to certify and authorize the union as the employees' bargaining agent without a secret ballot. The provisions of the 1999 tribal-state compact requiring a secret ballot election apply, although the tribe and the union may agree to a different arrangement.
- Provisions regarding dispute resolution mechanisms and requiring binding arbitration are similar to those in the Coyote Valley tribal-state compact.

2005 Unratified Tribal-State Compacts

In 2005, Governor Schwarzenegger negotiated new tribal-state compacts with the Yurok Tribe of the Yurok Reservation, the Big Lagoon Rancheria and the Los Coyotes Band of Cahuilla and Cupeño Indians that were not ratified by the legislature.

Yurok Tribe of the Yurok Reservation

- The model labor relations ordinance appended to the compact (Exhibit B) is similar to that in the Lytton Rancheria compact and, as in other 1999 compacts, the tribe agrees to adopt it. There is no provision for "card check neutrality" as in six of the 2004 compacts. The union is not afforded the option of presenting authorization cards signed by 50 percent of the eligible employees, thereby requiring the tribe to enter into an agreement to certify and authorize the union as the employees' collective bargaining agent. Instead the provisions of the 1999 compact requiring a secret ballot election apply, although the tribe and the union may agree to a different arrangement.
- An employment preference for members of the tribe is not explicitly stated as in the previous compacts.

Los Coyotes Band of Cahuilla and Cupeño Indians and the Big Lagoon Rancheria

- The tribes agree to adopt and comply with federal and state workplace and occupational health and safety standards, allow inspection by state inspectors, and consent to the jurisdiction of state enforcement agencies including the Division of Occupational Safety and Health, the Occupational Safety and Health Standards Board and the Occupational Safety and Health Appeals Board, and of state courts.
- The tribes may elect to finance their liability for unemployment compensation benefits, instead of participating in the California Unemployment Fund, by any method specified in California Unemployment Insurance Code § 803.
- The tribes agree to participate in the state's workers' compensation program.
- The tribes agree to adopt the Model Tribal Labor Relations Ordinance appended to the compact. This model ordinance contains a section on "Tribe and union neutrality" similar to that in the Coyote Valley compact.
- ***Card check neutrality:*** If a labor organization offers in writing to not engage in strikes or disparage the tribe, and to resolve all issues through binding dispute mechanisms, the tribes agree to recognize and certify the labor organization if it provides dated and signed authorization cards from at least 50 percent plus one of the eligible employees, without a formal election.
- Although similar in other respects to the Coyote Valley tribal-state compact, the appended model labor relations ordinance does not explicitly mention the union's right to strike, providing instead that the tribe and labor organization will negotiate in good faith for a collective bargaining agreement.

2006 Unratified Tribal-State Compacts

In August 2006, the governor submitted six tribal-state compacts to the legislature for ratification. An amended compact with the Quechan Tribe of the Fort Yuma Reservation, which had been negotiated in 2005, was ratified. Five newly negotiated amended 1999 compacts were not ratified. These were with the Morongo Band of Mission Indians, the Pechanga Band of Luiseño Indians, the San Manuel Band of

Mission Indians, the Agua Caliente Band of Cahuilla Indians, and the Sycuan Band of the Kumeyaay Nation.

Morongo Band of Mission Indians, Pechanga Band of Luiseño Indians, Agua Caliente Band of Cahuilla Indians, San Manuel Band of Mission Indians, Sycuan Band of the Kumeyaay Nation—amended 1999 compacts

- The tribes agree to comply with standards no less stringent than those in the federal Fair Labor Standards Act and implementing regulations.
- The tribes agree to participate in the state's workers' compensation program for their employees and to ensure that independent contractors doing business with the tribe comply with state workers' compensation laws. Alternatively, the tribe may establish its own system of insuring gaming facility employees' work-related injuries, with specified standards.
- The ***Model Tribal Labor Relations Ordinance*** appended to the 1999 tribal-state compact remains in force. Notably, it does not contain the provision for card check neutrality found in eight of the 2004 –2005 compacts (six of which have been ratified), or the revised dispute resolution process found in those compacts.